

United States District Court  
Eastern District of California

Brian Williams,

Petitioner,

vs.

Jim Hamlet, Warden,

Respondents.

No. Civ. S 98-1816 FCD PAN P

Order

-oOo-

September 6, 2005, petitioner filed a request for additional time to file a notice of appeal of this court's August 8, 2005, order and judgment denying his petition for a writ of habeas corpus.

A timely notice of appeal is a jurisdictional prerequisite to appealing a judgment of the district court. Fed. R. App. P. 4(a); Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978). Ordinarily, a party in a civil case must file the notice within 30 days after judgment is entered. Fed. R.

1 App. P. 4(a). If a party files a motion pursuant to Fed. R. Civ.  
2 P. 60 within ten days of the entry of judgment, time to file a  
3 notice of appeal runs from entry of the order disposing of the  
4 motion. Fed. R. App. P. 4(a)(4)(A)(vi). The district court may  
5 extend the time if a party so moves within 30 days of the time  
6 the notice must be filed and the party shows either excusable  
7 neglect or good cause. Fed. R. App. P. 5(A).

8 A court may find excusable neglect upon a showing a party  
9 failed timely to file because of careless omission to act. See  
10 Pincay v. Andrews, 351 F.3d 947, 950 (9th Cir. 2003). Since  
11 petitioner sought an extension before time to appeal expired, he  
12 cannot satisfy this standard. See State of Oregon v. Champion  
13 International Corp., 680 F.2d 1300, 1301 (per curiam) (noting the  
14 good cause language was added to the rule because the excusable  
15 neglect standard does not fit the situation in which an appellant  
16 seeks an extension before the expiration of the initial appeal  
17 period); see also Fed. R. App. P. 4(a)(5) advisory committee  
18 note.

19 August 22, 2005, petitioner filed a motion pursuant to Rule  
20 60(b) and the court denied that motion September 1, 2005.  
21 Accordingly, petitioner must file a notice of appeal no later  
22 than October 4, 2005.

23 September 6, 2005, petitioner submitted a five-page  
24 memorandum with citations to legal authorities explaining he  
25 cannot timely file a notice of appeal because his access to the  
26 law library has been limited. He does not explain how he could

1 draft such a request but not file a notice of appeal and so fails  
2 to show good cause.

3 Accordingly, petitioner's September 6, 2005, request is  
4 denied.

5 So ordered.

6 DATED:October 5, 2005

7  
8 /s/ Frank C. Damrell Jr.  
9 FRANK C. DAMRELL JR.  
United States District Judge